IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 895 OF 1998
IN
COMPANY PETITION NO.1 OF 1997

Swift Finlease (India) Limited,
a company incorporated under the
Companies Act, 1956, and having its
registered office 101, Neelkanth
Commercial Centre, Sahar Road,
Andheri (East), Bombay 400 099. .. Appellant

v/s.

Magnum Ferro Metals Private Ltd.,
a company registered under the
Companies Act, having its registered
office at 215/18, Janki Centre,
Plot No.29, Shah Industrial Estate,
Off. Veera Desai Road,
Andheri (West), Bombay 400 058. .. Respondent

Mr. Satish Shetye with Ms. Swati Deshpande i/by
Mr. M.S.Bodhanwala for appellant.

Mr.B.G.Wadhwa for Respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

The order dated 15th June, 1998 passed by the learned Company Judge in Company Petition No. 01 of 1997 is under challenge in this appeal.

2. We shall refer the parties as party in the company petition i.e. respondent herein as the petitioner and the present appellant as the company. The petitioner filed company petition under section 433 and 434 of the Companies Act for seeking an order for winding up of the company. In the company petition, the petitioner averred that on 6th June, 1995, the petitioner deposited a sum

of Rs.80,00,000/- as an inter-corporate deposit (ICD) with the company. On 7th June, 1995, a further sum of Rs.20,00,000/- as ICD was deposited with the company. The said deposit was to carry interest with 18% per annum. In all, a sum of Rs.50,00,000/- was repaid by the company by 16th January, 1996. The petitioner called upon the company by their letter dated 30th July, 1996 to pay back the remaining amount of Rs.50,00,000/-. In the reply dated 16th August, 1996, the company intimated the petitioner that a sum of Rs.20,00,000/- shall be paid by four instalments of Rs.5,00,000/- each from the months of August, 1996 to November, 1996. Further sum of Rs.10,00,000/- shall be paid in the month of December, 1996 and the balance of Rs.20,00,000/- in the month of January, 1997. The company paid a sum of Rs.5,00,000/- but later on did not make any payment. The petitioner by their advocate's letter dated 22nd November, 1996, called upon the company to pay the remaining amount of Rs.45,00,000/- alongwith interest thereon within three weeks from the date of the receipt of the letter, failing which the petitioner intimated the company that they may institute the winding up petition. According to the petitioner, the said letter dated 22nd November, 1996 was delivered on the registered office of the company but no payment was made, necessitating the winding up petition.

3. In response to the company petition, the company filed two affidavits through their vice

president K.J.Kurian. The first reply affidavit was filed on 9th March, 1998 and the other affidavit was filed on 2nd April, 1998. In the reply affidavit, the company sought to set up the case that the ICD received by the company was for lending the said amount to Anand Agrochem Pvt.Ltd. and the agreement was that as and when the said Anand Agrochem Pvt.Ltd. repaid the loan, the company will discharge the inter-corporate deposit in favour of the petitioner. In this connection, the company submitted that the deal was through M/s. Haribhakti Financial Services Ltd. and they were necessary party. The company set up the case that they have already filed the suit against M/s. Anand Agrochem Pvt.Ltd. for recovery of the due amount and despite the direction of the learned Single Judge of this court given in the order dated 8th December, 1987 directing M/s. Anand Agrochem Pvt.Ltd. to deposit a sum of Rs.50,00,000/-, the said M/s. Anand Agrochem did not deposit the sum of Rs.50,00,000/- before this court and as soon as the amount was recovered from M/s. Anand Agrochem, the same would be repaid to the petitioner. The company stated that they have already paid a sum Rs.50,00,000/- out of its own funds to the petitioner. However, the company denied that it was indebted to the petitioner for a sum of Rs.45,00,000/- plus interest as claimed by the petitioner. In the subsequent affidavit, the company sought to set up the case that M/s. Haribhakti Financial Services Ltd. in collusion and connivance with the petitioner and M/s. Anand

Agrochem Pvt.Ltd., cheated the company and induced them to accept deposit from the petitioner for the purpose of lending the money to M/s.Anand Agrochem Pvt.Ltd.

4. The defence set up by the company is prima facie unacceptable in the light of its letter dated August 16, 1996 sent to the petitioner. In the letter dated August 16, 1996, the company stated thus-

> ".....we are trying our level best to repay the amount due to you, regardless of the recovery of the money from M/s. Anand Agrochemical India Pvt.Ltd. Accordingly, we plan to repay the amount to you as per the following schedule:
>
> | | |
> |---|---|
> | August 96 | Rs. 5 Lakhs |
> | September 96 | Rs. 5 Lakhs |
> | October 96 | Rs. 5 Lakhs |
> | November 96 | Rs. 5 Lakhs |
> | December 96 | Rs.10 Lakhs |
> | January 96 | Rs.20 Lakhs" |

5. The company in the said letter further stated that in case M/s. Anand Agrochem Pvt.Ltd. repaid their money, they would pay the due amount to the petitioner in lumpsum. The company also in that letter requested the petitioner not to deposit the cheque of Rs.50,00,000/- already given to them.

6. The aforesaid contents of the letter dated 16th August, 1996 leave no manner of of doubt that petitioner deposited ICD in the sum of Rs.100 lakhs

with the company. The company had already repaid Rs.55,00,000/-. For the remaining amount of Rs.50,00,000/-, the company gave a cheque of Rs.50,00,000/- to the petitioner but requested them not to deposit the said cheque and that the balance amount shall be paid by the company in instalment as set out in the letter. In the backdrop of these facts, the defence now sought to be set up that the company was only agent and ICD of Rs.100 lakhs was made by the petitioner for lending and advancing the said amount to M/s. Anand Agrochem Pvt.Ltd. can hardly be accepted. The defence set up by the company cannot be accepted for yet another reason that if the ICD of Rs.100 lakhs was advanced by the petitioner to the company only for lending and advancing it to M/s. Anand Agrochem Pvt.Ltd. and that the company was used only as an agent by the petitioner then there was no occasion for the company to file suit for recovery of the sum of Rs.100 lakhs against M/s. Anand Agrochem. The defence that the petitioner in collusion and connivance with M/s. Haribhakti Financial Service Ltd. and M/s. Anand Agrochem Pvt.Ltd. cheated the company is noted to be rejected.

7. In our consider view, the learned Company Judge was justified in holding that the company has no bonafide defence and that no interference is called for in the impugned order.

8. The appeal, accordingly, fails and is dismissed with costs.

9. Time of three months granted by the learned Company Judge directing the respondent to deposit the amount of Rs.45,00,000/- in this court shall now be computed from today.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)